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In the Supreme Court of the United States

OCTOBER TERM, 1995

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Petitioner,
vs.
J. JACK BRAS, individually and dba J. JACK BRAS & ASSOCIATES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

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December 29, 1995

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE PETITIONER

Respondent challenges California Public Utilities Code sections 8281-8386 ("Code") and the Public Utilities Commission of the State of California's ("Petitioner" or "Commission") General Order 156 ("Order") alleging that the Code and the Commission's Order violated his constitutional rights under the 14th Amendment of the U.S. Constitution, as well as Article 1, Sections 7 and 8 of the California Constitution, on the basis of race and sex. As petitioner explained in the certiorari petition (Pet. 10-27), respondent failed to satisfy the bedrock standing requirements of Article III of the U.S. Constitution, and the Ninth

Circuit's holding to the contrary squarely conflicts with decisions of this Court.

In the instant case, respondent can manufacture no real, earnest and vital controversy against the Commission. "A federal court is powerless to create its own jurisdiction by embellishing otherwise deficient allegations of standing." *Whitmore v. Arkansas*, 495 U.S. 149, 155-156 (1989). The Ninth Circuit has done so here. In so doing, the Ninth Circuit is transforming the federal courts into forums for airing " 'generalized grievances' about the conduct of Government." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208 217 (1974) (citation omitted). This result not only opens the floodgates to unnecessary litigation, but also subverts the structure and functioning of government. Litigation brought in the absence of identified injury places unreasonable burdens on federal, state and local governments and upon the federal courts.

As stated in the certiorari petition (Pet. 27), the requisite links in the chain of causation between the Code and Order and any potential future asserted injury are far too weak for the chain as a whole to sustain respondent Bras' standing. *Allen v. Wright*, 468 U.S. 737, 759 (1984). Respondent has offered no persuasive or credible defense of the standing ruling by the court below and no persuasive reason why this Court should decline to consider these important issues.

I.

RESPONDENT'S OPPOSITION TO THE CERTIORARI PETITION, LIKE THE NINTH CIRCUIT DECISION BELOW, FAILS TO DEMONSTRATE THAT RESPONDENT SATISFIED THE INJURY REQUIREMENT FOR ARTICLE III STANDING

The Ninth Circuit, in a split decision, concluded that respondent Bras satisfied the injury requirement and there-

fore has standing to seek declaratory and injunctive relief against the Commission. *Bras v. California Public Utilities Commission*, 59 F.3d 869, 875-876 (9th Cir. 1995). Pet. App. 16.[1] However, Judge Pregerson strongly disagreed and concluded that Bras cannot show a "very significant possibility of future injury," that the Code and Order do not erect a barrier that makes it more difficult for members of one group to obtain a benefit than it is for members of another group, and that Bras cannot show the necessary causal nexus between his alleged injury and the Commission's conduct. *Id.*, 876-879. Pet. App. 17-18. As demonstrated in petitioner's certiorari petition, the Ninth Circuit's relaxation of the injury-in-fact prong of Article III standing undermines constitutional standing requirements and impermissibly expands federal court jurisdiction. Pet. 11-19. The district court properly dismissed respondent Bras' complaint. Judge Pregerson agrees. Simply put, there is no injury.

A. Respondent's Opposition Fails to Address The Specific Factual Predicate Which Distinguishes This Case From Others Upon Which Respondent Erroneously Relies.

Petitioner has pointed out the difficulty of establishing standing in the factual context of the instant case, where the alleged injury is traceable to a third party actor, Pacific Bell, who is not before the Court. Pet. 21-22. Although standing is not precluded, it is ordinarily "substantially more difficult to establish." Pet. 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). The Ninth Circuit failed to address this critical distinction, thereby conflicting with *Lujan* and with its own precedent in *Coral Constr. Co. v. King County*,

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[1] Where indicated, "App." refers to the Appendix. When referring to the Appendix to the certiorari petition, the reference is indicated as follows: "Pet. App." When referring to the Appendix to this reply brief, the reference is indicated as follows: "Rep. App."

941 F.2d 910 (9th Cir. 1991) *cert. denied*, 502 U.S. 1033 (1992) and in *Associated General Contractors of California v. Coalition for Economic Equity*, 950 F.2d 1401 (9th Cir. 1991), *cert. denied*, 503 U.S. 985 (1992). Pet. 22. This higher threshold for standing, as dictated by these facts, was not satisfied. In its opposition, respondent did not make the slightest attempt to address this critical factual distinction which sets this case apart from *Northeastern Fla. Chapter of Associated Gen. Contractors v. City of Jacksonville*, 508 U.S. ____, 124 L.Ed.2d 586 (June 13, 1993) and the other authorities upon which respondent unreasonably relied.

The facts in *Northeastern* are clearly distinguishable from the facts herein. In *Northeastern*, a new ordinance was enacted which was also a set aside in that it allowed the city to reserve contracts for the **exclusive competition** of women and minority businesses ("WMBE"). *Id.* at 594. The use of set-asides for the exclusive competition of WMBEs under the facts of *Northeastern* makes it inapposite when compared to the facts of the instant case. The factual predicate at issue here involves neither set-asides nor preferences. While participation for those utilities subject to the Code and Order in the Commission's Women, Minority, Disabled Veteran Business Enterprise ("WMDVBE") program is mandatory, utilities' efforts to achieve the goals are voluntary. *California Public Utilities Commission*, D.95-12-045, slip op. at 7, (December 18, 1995).[2] Rep. App. 7-8,10. A

[2]On December 18, 1995, the Commission issued Decision No. 95-12-045 in Rulemaking 93-09-026 ("Rulemaking Decision") pertaining to the Commission's WMDVBE program. The text of that decision is set forth in the Appendix. Rep. App. 1-29. This Rulemaking Decision resolved various issues raised in R.93-09-026. In addition, in the Rulemaking Decision, the Commission amended § 8.12 of the Order to remove any penalty for failure of a utility to meet and/or exceed the WMDVBE goals. *California Public Utilities Commission*, D.95-12-045, slip op. at 11, (December 18, 1995), Rep. App. 11-12. This amendment merely conforms the Order to the underlying statute, the Commission's

goal is a "target which when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota." Order § 1.1.13, Pet. App. 75. While utilities are encouraged to maximize their use of WMDVBE businesses, utilities that fall short of attaining these goals must only provide a reasonable explanation of their failure to do so. *Id.*, slip op. at 11, Rep. App. 11. Petitioner has demonstrated that the Code and Order do not establish set-asides or preferences. Furthermore, nothing in the Code and Order prevents respondent from bidding on an equal footing with any other architect. Therefore, the authorities cited by respondent purporting to dispose of the issues in this case are inapplicable and cannot be forced to fit this factual predicate.

B. Constitutional Requirements for Article III Standing Remain Unchanged Notwithstanding the *Northeastern* Case.

Respondent falls short of meeting the "irreducible minimum of standing" required for going forward with this case. Pet. 11-12. Bras' utter failure to establish an actual or imminent injury defeats his claims. Since Bras seeks declaratory and injunctive relief against the Commission, a showing of past injury alone does not carry the day. This Court and the Ninth Circuit acknowledge that a showing of past injury does not establish a real and immediate threat of a similar injury in the future. Pet. 14-15. Instead, Bras is held to the standard of showing a "very significant possibility of future harm." *Coral Construction* at 929. Bras failed to show that the mere existence of the Code and Order will likely cause him imminent injury.

In an attempt to give legal legitimacy to its fatally flawed opposition, respondent suggests that *Northeastern* somehow

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intent and the actual operation of the WMDVBE program and in no way affects the otherwise mandatory provisions of the Code and Order.

alters the constitutional test for standing, thereby resolving "a previous split of authority between the Eleventh and Ninth Circuits." Opp. 16. This misguided notion is refuted by *Northeastern's* unambiguous statement that "[t]he doctrine of standing is 'an essential and *unchanging* part of the case-or-controversy requirement of Article III [emphasis added; citation omitted]." *Northeastern* at 595.

Respondent's rote recitation of abstract principles plucked from *Northeastern* does not make respondent's case. Respondent relies heavily upon the Ninth Circuit's holding that "[u]nder *Northeastern Fla.*, Bras need only demonstrate that he is 'able and ready' to bid on contracts and that a *discriminatory policy* prevents (him) from doing so on an equal basis." *Bras* at 873. Opp. 16-17; emphasis added. Were the facts in this case similar to the facts under *Northeastern*, the latter might have some applicability to this case. Such is not the case. The Commission's WMDVBE program does not authorize set-asides or preferences nor prevent anyone from competing for utility procurement on an equal basis. Moreover, the Ninth Circuit has acknowledged that it expressed "no opinion as to whether the Code or Order discriminates against Bras on the basis or race or gender." *Id.*, 875. Pet. App. 16. There is no proof of a discriminatory policy in this case.

II.

THE OPPOSITION AMOUNTS TO LITTLE MORE THAN UNSUBSTANTIATED CHARGES OF MISREPRESENTATION.

Respondent's allegations that petitioner has misstated the facts or has omitted material evidence are completely lacking in merit. Indeed, the vast majority of respondent's "Reasons That The Petition Should Be Denied" (Opp. 20-28) is devoted to such unfounded assertions, as opposed to a coherent discussion of the standing issue. Judged in the

most favorable light, such allegations reveal a profound lack of understanding of the Code and Order and the Commission's WMDVBE program. At worst, such allegations border on the bizarre.[3]

Indicative of respondent's serious lack of understanding of the Commission's WMDVBE program and utility procurement practice is respondent's quibble over the term "bid." Inexplicably, respondent claims that no bidding was involved in the selection process at issue in *Bras*. Opp. at 20. It is incontrovertible that Pacific Bell's preliminary screening is an integral part of its bidding process. Pacific Bell "invited" the 13 architectural firms to bid. The preliminary screening of architects is the *sine qua non* for determining which architects would be invited to negotiate further, and therefore falls under the umbrella of Pacific Bell's bidding process. Respondent's literal interpretation of the term "bid" is reflective of respondent's myopic view of the issues confronting the Court in this case.

In short, the Court should summarily dismiss respondent's unfounded assertions that petitioner either misstated the facts or failed to include material evidence. Such claims

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[3]Consider respondent's vague and unsupported accusation that the "Questions Presented" contains misstatements. Not only did respondent fail to state what the alleged misstatements were, respondent did not in any way attempt to reframe the question presented in accordance with respondent's unstated views. Petitioner has not misstated the facts, nor has petitioner misrepresented the Commission's WMDVBE program. The Code and Order submitted in the appendix to the certiorari petition speak for themselves and petitioner's references to the Code and Order all cite to the precise language set forth therein. Similarly, with regard to the omission of "material evidence," such allegations are also groundless. Petitioner properly refused to burden this Court with either cumulative and/or irrelevant evidence. Furthermore, respondent is free to augment the record to this Court if respondent so desires, and respondent has in fact done so.

are not only baseless, but result in respondent's utter failure to address the serious issues raised by the certiorari petition.

CONCLUSION

For the foregoing reasons and those stated in the petition, it is respectfully submitted that the petition for a writ of certiorari should be granted.

Respectfully submitted,

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December 29, 1995

Decision 95-12-045 December 18, 1995

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking on the Commission's own motion to revise General Order 156.

R. 93-09-026
(Filed September 17, 1993)
(For appearances, See Attachment B.)

OPINION

On September 22, 1993, we issued an Order Instituting Rulemaking (OIR) in this docket to consider the amendment of General Order (GO) 156, which implements Public Utilities (PU) Code §§ 8281-8286. PU Code §§ 8281-8286, commonly referred to as the Women/Minority/Disabled Veterans Business Enterprise (WMDVBE) statute, requires certain described public utilities to seek to increase their procurement of goods and services from women, minority, and service disabled veteran-owned business enterprises. Among other things, GO 156 sets goals of purchasing 20% of the products and services used by utilities from WMDVBEs by the end of 1993 (15% for minority-owned business enterprises and 5% from women-owned business enterprises). Section 8.2.1 of GO 156, adopted by Decision (D.) 93-06-041, provides that numerical goals for Disabled Veteran Business Enterprises (DVBEs) will become effective in 1997. That section also provides that each utility establish an annual goal of increasing DVBE procurement (until 1997). It need not remain static until that time.

GO 156 has been amended several times since its 1988 adoption in D.88-04-057. Certain of these amendments were made pursuant to various petitions for modification of

D.88-04-057 in Rulemaking (R.) 87-02-026, while others were the product of three petitions for modification filed in R.91.-02-011, the most recent prior rulemaking proceeding.

On May 26, 1993, after widely disseminated notice, we convened a Full Panel Hearing (FPH) to inquire into the status of the WMDVBE program established under GO 156. Participants were invited to address a number of issues with implications for the existing GO 156 program. Subsequently, in D.93-07-057, we stated that a new proceeding would be opened to address the issues explored at the FPH. This is that proceeding.

Issues Raised for Consideration

As a result of experience gained by the Commission in the administration of the WMDVBE program from its inception, continuing dialogue with representatives of participating utilities, veterans' groups and other interested parties, and comments raised at the FPH, a number of issues were found to be in need of discussion and resolution in this proceeding. These issues were set forth in the OIR initiating this proceeding.

Interim Opinion (D.94-08-027) Issued August 3, 1994

In the period between September 22, 1993, the date the OIR in this proceeding was served, and August 3, 1994, Commission staff solicited comments from and met with representatives of a broad based group of utilities, women-owned and operated businesses, minority-owned business enterprises, disabled veterans and veterans organizations, governmental agencies, and others having an interest in this subject. In addition, the OIR requested the parties to this proceeding to provide comments on the issues referred to in the OIR with the understanding that those comments would be assessed by the Commission, and workshops, alternative dispute resolution processes or evidentiary hearings, as ap-

propriate, utilized to resolve contested issues before any revisions to GO 156 were proposed. Further, we indicated that any changes ultimately proposed would be mailed for comment to all on the service list established in this proceeding before we made a final decision.

During the course of the year-long discussions referred to above, several of the issues referred to in the OIR were resolved by agreement by and between the parties to the OIR. The issues which were resolved and the details of the manner of resolution were set forth in an Interim Opinion (D.94-08-027) signed on August 3, 1994, and served on the parties the following day. None of the issues resolved or the method of resolution set forth in the Interim Opinion required a change in or amendment to the text of GO 156.

Since D.94-08-027 did not resolve all of the issues referred to in the OIR, discussions concerning the unresolved issues continued, and the discussions were broadened to include some "housekeeping" matters that were not originally included in the OIR and which would not require any textual changes in GO 156.

In conformity with Ordering Paragraph 1 of the Interim Opinion (D.94-08-027), the Commission WMDVBE staff undertook a study to determine the comparability of the California Department of Transportation's (Caltrans) standards for verification of Women and Minority Business Enterprise (WMBE) status to the Commission's GO 156 program, and the feasibility of using the Caltrans' databank in the GO 156 program.

On November 18, 1994, a copy of the staff report referred to above was mailed to each of those who were on the service list of the OIR. Thereafter, pursuant to notice, a prehearing conference (PHC) was held before the assigned administrative law judge (ALJ) on November 21, 1994.

Copies of staff's report were distributed to all PHC attendees.

At the PHC, it was noted that all pending matters in R.87-02-026 had been settled and the latest petition for modification withdrawn, and that that proceeding was officially closed. Further, a discussion of the issues which remained unresolved after the issuance of the Interim Opinion, together with related issues, took place. At the conclusion of the PHC, the four yet unresolved issues were formally articulated by the ALJ, and the parties were requested to file additional comments on these four issues:

a. whether the current goal of 20% (15% minority plus 5% women) women and minority business enterprise utilization should be increased;

b. whether regularly scheduled generic proceedings are needed to provide a forum for resolving issues concerning utility goal achievement;

c. whether, or to what extent, reporting requirements should be established or changed by the Commission to account for utility utilization of (1) brokers or distributors, (2) WMDVBE utilities, and (3) subcontractors; and

d. whether the Commission should adopt the certification procedures contained in 49 CFR Part 23 and used by Caltrans for WMBE programs of state agencies, in place of the current verification standards utilized by Cordoba Corporation, the WMDVBE verification administrator for utilities.

Additional Issues

One of the matters which arose at the PHC and which has been the subject of much discussion, both informally and formally, is the most useful format for reporting the results of each utility's WMDVBE procurement efforts. While not alluded to in either the OIR or the Interim

Opinion, this is an issue of some substance, as a utility's report is currently the only source available to the Commission from which the extent of utility utilization of WMDVBE's may be ascertained. For this reason, we believe it is appropriate for us to consider this issue and propose a revised format to be used by the utilities in their yearly submission concerning their WMDVBE utilization. That discussion appears elsewhere in this decision.

In 1992, Liberty Builders, a verified WMBE, and Minority Business Enterprise Legal Defense and Educational Fund (MBELDEF), a public interest firm headquartered in Washington, D.C., filed a complaint against Pacific Gas and Electric (PG&E) (Case (C.) 92-07-016) alleging, among other things, that PG&E failed to exert its best efforts in encouraging and furthering minority participation in its procurement program. In response to the complaint, PG&E filed a motion to dismiss on the ground that a complaint proceeding is not the proper forum to challenge a utility's WMBE accomplishments. On the authority of case precedent, the motion was granted and the complaint dismissed (see D.94-10-048). In our decision dismissing the complaint, we indicated that while we agreed that the complaint procedure was not a proper vehicle for resolution of questions concerning utility outreach efforts, the substance of the complaint needed to be addressed. We then referred the allegations to this proceeding for consideration. The discussion of that matter is also to be found in a later portion of this decision.

Discussion

General

As indicated above, the Interim Opinion issued in this proceeding disposed of a number of issues referred to in the OIR, and specified a procedure for considering and disposing of the remaining unresolved issues.

It is to be noted that the OIR requested comments on the issues specified therein, and provided an opportunity for reply comments to be submitted. The parties to this proceeding responded to the offer to submit comments, and as a result, a large number of comments and reply comments addressing the various issues were received. Following receipt of comments and reply comments by the Commission, the parties, under the sponsorship of the Commission's WMDVBE Program Director and his staff, participated in a number of formal and informal meetings, workshops, and discussion groups, in which every aspect of the issues under consideration were explored. In view of the numerous opportunities afforded the parties for discussion of the issues under consideration and the thoroughness of the submissions of the parties, we believe additional hearings on the issues before us are unnecessary.

Proposed Decision and Comments

On September 12, 1995, the proposed decision (PD) of the ALJ was issued pursuant to § 311 of the PU Code disposing of the four outstanding issues and the "housekeeping" matter which was added during the pendency of this proceeding.

Following the issuance of the ALJ's PD, comments were received from virtually all of the utilities to which the WMDVBE statute applies, as well as from various organizations having an interest in this subject. In general, the majority of utility commenters opposed any increase in the numerical goals set forth in GO 156, while at the same time expressing a willingness to attempt to voluntarily increase minority/women participation in their utility's procurement program. As expected, representatives of various minority groups strongly urge increasing minority awards to the level of 30-50% of the utilities procurement contracts, with women obtaining up to 15%.

The commenters, in general, oppose the adoption of the verification standards set forth at Title 49 Code of Federal Regulations, Part 23, used by Caltrans for other state WMBE verification purposes. This opposition is based on the ever changing nature of those standards, and the fact that changes in those provisions are anticipated in the near future.

Few opinions were expressed on the issue of whether regular generic proceedings were needed to provide a forum for resolving issues concerning utility WMDVBE achievements.

The utilities were the main commenters on the issue of reporting requirements and the format of such reports. In general, the utilities favored maintaining the status quo.

Changes reflecting the adoption of some of the comments are made in the text where appropriate.

Issue No. 1:

Whether the current goal of 20% (15% minority plus 5% women) women and minority business enterprise utilization should be increased.

In the early days of the WMDVBE program, known then as simply the WMBE program, it was well appreciated that in the absence of enforcement provisions in the enabling statute, the ultimate success of the program depended on voluntary good faith compliance with the spirit of the WMDVBE statute codified at PU Code §§ 8281-8286. Further, each of the utilities subject to the statute expressed its commitment to increasing minority participation in its individual program for the procurement of goods and services. Everyone connected with the WMDVBE program was aware that a WMDVBE program within each utility covered by the statute was mandatory, i.e., § 8283 of the WMDVBE statute sets forth mandatory requirements that

direct the utilities subject to the statute to submit annual, detailed and verifiable plans for increasing WMDVBE procurement, to establish short- and long-term goals for WMDVBEs, and to comply with reporting requirements as established by the Commission. However, efforts to achieve the goals established were completely voluntary, and all recognized that success of the program would result only from the development of a spirit of cooperation and a genuine good faith effort to utilize and increase the level of minority participation.

As a result of much discussion and negotiation by and between the Commissioners, WMDVBE staff, and their counterparts in the utility sector, an initial goal of 20% minority participation (15% minority and 5% women) was established with the hope that that participation level could be achieved in the first five years of the program (by the year 1993). As is illustrated by the following breakdown, that goal for Women Business Enterprises (WBEs) was achieved by 1990, and for Minority Business Enterprises (MBEs) by 1994.

Contracts Awarded to WMBEs
(Expressed in % of total dollar value)

Year	WBE	MBE	Total
1990	7.73%	9.58%	17.31%
1991	9.48%	11.82%	21.30%
1992	8.10%	13.75%	21.85%
1993	6.63%	13.47%	21.99%[1]
1994	7.67%	15.11%	22.78%

Bearing in mind the success achieved in the program through 1994, and considering the fact that PU Code § 8281(b)(1)(B) indicates that public agencies [other than the Commission] which have established short- and long-

[1]Total includes 1.89% WMBE subcontractors and indirect purchases with gender/ethnicity unspecified.

range WMDVBE goals are awarding 30% or more of their contracts to such WMDVBE's, the Commission, through the assigned ALJ, requested at the November 21, 1994 PHC, that the parties file additional comments directed at whether the program's goal of 20% women and minority participation could be increased, possibly to 30%. Of those utilities which responded, only one indicated that it could achieve that level with no difficulty. Several indicated that they could not give a response without further study, and a few stated they could not reach a conclusion in the absence of a survey indicating the availability of minority and women vendors, as well as disabled veterans, sufficient to achieve such a level of participation. In a letter to the ALJ dated February 23, 1995, and submitted on behalf of the utilities, the spokesman for the utilities summarized the utilities' position on that issue in these words:

> "At the Prehearing Conference, Your Honor asked that the utilities comment once again on the issue of whether they would be willing to voluntarily increase their WMBE goals above those currently established by the individual utilities and beyond those required by Sections 8 and 8.2 of the Commission's General Order 156. The parties discussed this matter in detail on January 26, 1995, and concluded that this matter had been fully addressed in the utilities comments filed with the Commission, the Commission's Interim Opinion (D.94-08-027) and the response of each utility to Ordering Paragraph 2 of the Interim Opinion. Therefore, no further action on this matter is recommended.
>
> "The joint utilities remain firmly committed to achieve the maximum practical utilization of WMDVBEs and to strive to increase their annual WMDVBE procurement results. The joint utilities believe that goals are 'floors' and not 'ceilings' and will challenge themselves by voluntarily undertaking good faith efforts to increase

their WMDVBE procurement." (Letter from David L. Huard, Attorney, Southern California Gas Company to ALJ Robert L. Ramsey, February 23, 1995, pp. 1-2.)

We commend the joint utilities' expression of their firm commitment to achieve the maximum practical utilization of WMDVBEs and their commitment to increase their annual WMDVBE procurement results. However, the Commission clarifies that goals are neither floors nor ceilings. The Commission directs the parties to § 1.3.13 of GO 156 which defines goal in the following manner: " 'Goal' means a target which when achieved, indicates progress in a preferred direction. A goal is neither a requirement nor a quota." Thus, goals are targets that utilities voluntarily, and in "good faith," strive to meet. There are no repercussions if a utility falls below desired goals. At the same time, utilities are encouraged to meet or exceed what has been suggested as a target or goal.

On behalf of several minority groups, Public Advocates, a consortium of minority business enterprises, suggests that minority participation in utilities' WMDVBE procurement programs should be as high as 40%; 30% for MBEs and an additional 10% for WBEs. We believe those goals are laudable and achievable over time. In this regard, it is noteworthy that the utilities succeeded in achieving the initial goal of 20%, i.e., 5% for WBEs by 1990 and 15% for MBEs by 1994. The Commission is encouraged by these results. However, we must also note that only one utility indicated that it could achieve increased WMBE participation at this time. Several other utilities reserved reaching a conclusion until a survey or study of the availability of minority and women vendors is conducted. The Commission will review the matter within the context of the overall WMDVBE program.

As we stated in our R.93-09-026 (September 17, 1993), p. 7:

> "Before we could amend GO 156 to require utilities to set higher long term goals, we would need to establish on the record a rational basis for doing so. Obviously, detailed supplier availability studies such as those described in *Croson* and its progeny could form the basis for new goals. We do not reject the possibility that other bases for new goals could also be presented."

The record is insufficient at this time to support an increase in goals. However, as stated above, the Commission will entertain various bases for new goals with the understanding that the Commission must, under current law, have a clearly justified basis and adequate record for increasing those goals.

We applaud the WMDVBE results to date, recognizing that utilities' achievement of GO 156's WMDVBE goals are voluntary, and reflect the good faith intention of the utilities to increase the participation of women and minorities in their procurement programs. We encourage utilities to maximize their use of WMDVBE businesses, and we note that for those utilities that fall short of attaining GO 156's goals, that the utilities must only provide a reasonable explanation of their failure to do so.

The underlying statute, §§ 8281-8286 of the PU Code, does not provide for any penalty for failure of a utility to meet WMDVBE goals, nor does it provide for a penalty for a utility that exceeds its WMDVBE goals. Currently, § 8.12 of GO 156 reads as follows:

> "Except for any penalty imposed as a result of a Commission-initiated investigation, no penalty shall be imposed for failure of any utility to meet and/or exceed goals."

In the entire history of the WMDVBE program, the Commission has never initiated an investigation for the purpose of imposing a penalty for failure of any utility to meet and/or exceed goals. Furthermore, as stated above, the statute does not authorize such a penalty for the failure of any utility to meet and/or exceed goals. Therefore, in order to be consistent with both the underlying statute and Commission practice with regard to the WMDVBE program, the Commission is amending § 8.12 of GO 156 to read:

> "No penalty shall be imposed for failure of any utility to meet and/or exceed goals."

The Commission believes that this change to GO 156 is warranted as being consistent with the underlying statute, the Commission's intent and the actual operation of the WMDVBE program. This change to GO 156 in no way affects the otherwise mandatory provisions of §§ 8281-8286 of the PU Code or GO 156.

Disabled Veterans

In August 1990, Senate Bill 2398, was enacted by the Legislature and signed by the Governor, amending PU Code §§ 8281-8286 to include Disabled Veteran Business Enterprises (DVBEs) among the parties covered by those sections. That amendment to the PU Code was implemented by a subsequent amendment to GO 156 to include DVBEs, as provided in D.92-06-030. Thereafter, on June 3, 1993, in D.93-06-041, the Commission approved a settlement agreement among the utilities, the DVBE constituency and Commission WMDVBE program staff, which resolved then outstanding DVBE issues. That agreement provided that GO 156 be amended to add a new section [§ 8.2.1] to require each utility to establish a nonnumerical goal for increasing DVBE procurement through December 31, 1996,

followed by numerical goals set for 1997. Section 8.2.1 reads:

> "8.2.1 Each utility shall establish the annual goal of increasing DVBE procurement. In 1997, numerical goals will become effective."

Subsequent to the addition of § 8.2.1 to GO 156, the Commission convened a DVBE Goal Setting Task Force (GSTF), the purpose of which is to formulate a recommendation to the Commission regarding an appropriate numerical goal for utility procurement from DVBEs for 1997 and thereafter until changed.

The GSTF has initiated a fact gathering program and has undertaken to determine with a relative degree of precision, the number of disabled veterans who have been or are eligible to become verified DVBEs. The progress of the GSTF has been slowed appreciably by the lack of funding occasioned by budgetary pressures on both the state and upon the utilities. Like the state, utilities operate on budgets which have experienced severe contractions over the past several years, and as a result, programs such as the GSTF have not been able to accomplish their assigned tasks in the time the supporters of such programs anticipated or would like. The GSTF is, unfortunately, not immune from those difficulties.

In spite of these adverse economic pressures, the work of the GSTF continues, and we have no doubt that when its work has been completed, it will have arrived at a figure for DVBE participation acceptable to all parties. In the meantime, we note that while still small, DVBE participation in utility procurement programs is becoming statistically more significant and represents a growing percentage of the utilities' procurement effort. From 1992 through 1994, the DVBE participation rose five fold from 0.03% to 0.15% for the large utilities and about six fold from 0.06% to

0.34% for small utilities. We firmly believe and expect that DVBE participation levels in both large and small utilities' procurement programs will continue to grow at the same or an increasing rate, and for that reason we believe it appropriate to now establish an interim goal of 1.5%, which goal will be reviewed and subject to adjustment when the GSTF makes its final recommendation for the goals for 1997 and thereafter. We believe that the establishment of an interim goal at this time is necessary, given the unfortunate, yet understandable, delays experienced by the GSTF. The establishment of an interim goal, hopefully, will provide the utilities with a working target, while the GSTF prepares its recommendations for a numerical goal, to be effective January 1, 1997.

Issue No. 2:

Whether regularly scheduled generic proceedings are needed to provide a forum for resolving issues concerning utility WMDVBE achievements.

During our initial experience with the administration of the WMDVBE program, several problems concerning what procedural devices were available for the resolution of controversies under the WMDVBE statute and GO 156 arose. To illustrate, the issue in one early dispute was whether the complaint procedure set forth in the Commission's Rules of Practice and Procedure could be utilized to review a determination of the WMBE Clearinghouse denying verification of WMBE status to an applicant for such designation. Another example was whether the Commission's review of WMBE Clearinghouse determinations was to be *de novo* by the Commission or whether review should be restricted to a determination of whether the decision of the Clearinghouse was supported by substantial evidence in the record considered as a whole.

One issue that has been particularly troubling since the institution of the WMDVBE program is whether the complaint process is the proper, or best vehicle for a verified WMBE to challenge a utility's WMDVBE procurement efforts or achievements. We recognized that inherent in the question was the threat of vexatious litigation by a multiplicity of WMBEs sequentially seeking review of the same types of issues. Such a result was, in our view, undesirable, and in D.89-08-026, issued August 3, 1989, we held that a yearly generic proceeding was the proper forum in which to resolve issues concerning utility WMDVBE procurement results. Our thinking was that program accomplishments of the various utilities could best be reviewed and evaluated in an informal yearly proceeding by staff after the yearly achievement figures had been submitted by the utilities. Many WMBEs, however, interpreted our holding to mean that a formal trial-like procedure would be established in which the respective parties would appear before the assigned Commissioner or designated ALJ and present evidence supporting the parties' respective points of view, followed by the issuance of a formal decision by the Commission. This is not what we desired or intended. It was then and remains now our view that any allegation, in whatever form, challenging utility WMDVBE accomplishments be referred to the Commission's WMDVBE staff and examined and evaluated in light of that utility's achievements as reflected in its filed annual reports. Should the utility's WMDVBE efforts, after review by Commission staff, be found wanting, staff is in the best position to meet and confer with the utility in an effort to enhance the utility's effectiveness in achieving the program's stated goals.

Those having WMDVBE status must realize and remember that verification of WMDVBE status is not a guarantee

of the receipt of a contract award by any utility. As we said in D.91-01-012:

> "GO 156 does not require utilities to hire particular vendors. The legislation and implementing order are intended to help establish a level playing field, not to give special advantage to particular players." (Mimeo. at p. 11.)

That statement was a paraphrasing of an earlier statement we made in D.90-12-027, a decision regarding inclusion of natural gas purchases in the WMDVBE program:

> "We understand the concern that natural gas market uncertainty makes it impossible for utilities to be sure they can meet such a long-term goal, thus we remind the utilities that goals are just that — goals, and that if a utility cannot meet the goals it need only provide a reasonable explanation of its failure to do so. We emphasize that GO 156 does not create a set aside program for WMBEs, but rather simply opens the door for them to compete with established utility suppliers. If WMBEs cannot provide a needed product or service at a competitive price, they should not get the business.
>
> "We do not require the impossible, we merely wish to make clear that we consider this program important enough to take all steps necessary to ensure achievement of the possible." (38 CPUC2d 384, 394).

MBELDEF and Liberty Builders v. PG&E

On July 10, 1992, MBELDEF, a public interest firm, and Liberty Builders, a verified WMBE, filed a complaint (C.92-07-016) against PG&E, a public utility, alleging among other things, that PG&E did not put forth its best efforts in WMDVBE outreach in connection with its procurement program. PG&E moved to dismiss the complaint on the ground that under the authority of D.89-08-026, a

complaint proceeding was not the proper vehicle for resolution of the alleged malfeasance on the part of PG&E regarding its WMDVBE outreach program and efforts. In D.94-10-048, after disposing of a number of nonachievement issues on their merits, the Commission dismissed the remaining allegations of the complaint on the ground that a complaint was not the proper vehicle for resolution of issues involving utility WMDVBE achievements, and referred those issues to this "generic proceeding" for resolution.

In conformity to our original intent, MBELDEF's allegations concerning PG&E's WMDVBE outreach efforts have been considered and evaluated by Commission staff. An examination of PG&E's yearly WMDVBE reports discloses the following awards to WMDVBEs expressed as a percentage of the total procurement dollars spent by PG&E in each given year:

Reporting Year	Awards to WMDVBEs (Expressed as a % of total procurement dollars)
1990	15.9%
1991	22.8%
1992	23.1%
1993	21.3%
1994	24.4%

An examination of these figures reveals that while the Commission's stated industry-wide goal is 20% to be achieved by 1993, PG&E exceeded that goal as early as 1991, and has exceeded that goal each year since. From the foregoing, we find and conclude that MBELDEF's allegations that PG&E's WMDVBE outreach efforts were inadequate are without merit, and no action by this Commission based on MBELDEF and Liberty Builders' charges regarding goal achievement is warranted.

Issue No. 3:

Whether, or to what extent, reporting requirements should be established or changed by the Commission to account for utility utilization of (a) brokers or distributors, (b) WMDVBE utilities, and (c) subcontractors.

(a) **Brokers or Distributors:**

It often happens that in connection with its WMDVBE procurement program, a utility awards a contract to a verified WMDVBE that is a broker or a distributor. The question then arises whether the utility, utilizing Title 49 CFR Part 23 as a guide, should, when claiming amounts awarded to WMDVBEs, be required to report less than 100% of the dollars spent with a broker or a distributor. A simple example will illustrate the problem.

Assume a contract in the amount of $100,000 is awarded by a utility to a verified WMDVBE vendor that is a broker or distributor. Assume further that the items furnished by the vendor under the contract cost $75,000 wholesale and $25,000 represents the gross profit realized on the sale by the vendor. Heretofore, the Commission has allowed the utility to credit the entire $100,000 against its WMDVBE goal for that year. Under the rules set forth in 49 CFR, Part 23, however, the utility would be allowed to claim only the $25,000 gross profit realized by the vendor.

In the OIR, we requested comments on whether the Commission should adopt the federal reporting rule as expressed in 49 CFR, Part 23, or retain our present practice of allowing the entire contract amount as a credit against the utility's WMDVBE goal. The utilities were unanimous in their opposition to any change in the reporting rule, but not for the obvious and expected reason. While the utilities readily admitted that retaining the present rule made it far easier for the utilities to reach their individual WMDVBE yearly goals, they also pointed out the negative impact of

changing to the federal methodology. Adopting the federal reporting method would increase the utility's overhead costs, as it would require an independent auditing effort by the utility to verify the information supplied by each such vendor.

If the Commission were to adopt the federal methodology with respect to contracts awarded to brokers or distributors, each contract awarded, regardless of the type of product or service or the amount of the contract, would logically be required to be audited in the same manner, as each vendor has some costs associated with the procurement of the goods or services which are the subject of the contract awarded, and only a portion of the contract price will represent profit.

At the present time, we do not feel that a change in the method of accounting for the amount paid to brokers or distributors is justified, and will continue to allow the face value of contracts awarded to brokers and distributors to be credited against the utility's WMDVBE goal for that year. To do otherwise would, in our view, unnecessarily increase costs associated with the WMDVBE program, and thus jeopardize its continuation or the use of brokers or distributors that have played an important role.

(b) **WMDVBE Utilities:**

Situations involving WMDVBE utilities pose a similar problem as do brokers or distributors. The question here is whether utilities should be able to count toward their WMDVBE goals contracts with utilities which are themselves verified WMDVBEs. GO 156, § 8.9, excludes purchases from utilities from the category of products and services which must be included in the standard procurement base used to establish goals. Section 8.9 was designed to allow utilities permanently to exclude from their procurement base payments in areas such as franchise tax fees, and purchases from other utilities, which were believed to be

unlikely to ever be available from WMDVBEs. When GO 156 was adopted in 1988, it seemed unlikely that there would be many, if any, WMDVBE utilities, and it was believed that the large volume of utility purchases from other utilities, if included in the procurement base, would unrealistically skew the overall results and make it appear that utilities were making less progress than they actually were.

Now, however, with the ever expanding number of telecommunications utilities, such as cellular phone companies, there is at least one cellular carrier which is a verified WMDVBE. While it still appears appropriate to refrain from requiring utilities to include purchases from other utilities in their standard procurement base used to set goals, there is no reason to prevent utilities from counting actual purchases from verified WMDVBE utilities toward their WMDVBE goals.

(c) **Subcontractors:**

The issue of reporting subcontracts with WMDVBEs presents a different problem. The OIR raised the question whether GO 156 should be amended to allow utilities to report progress toward their yearly WMDVBE goals on a "percentage of purchase basis" in appropriate circumstances. GO 156 currently allows utilities to count only awards to verified WMDVBE subcontractors in their WMDVBE results (GO 156, § 6.3.9; see, *Re Public Utilities Code Sections 8281 to 8285 Relating to Women and Minority Business Enterprises* [D.88-09-024] 28 CPUC2d 36, 57). Only actual expenditures to WMDVBE subcontractors may be counted. *(Re Policies, Practices, Procedures, and Cost of Women and Minority Business Enterprise Programs Established Under General Order 156* [D.91-02-015], 39 CPUC2d 271, 274-275, 284 (Ordering Paragraph 1).)

Certain utilities proposed supplementing the requirement that utilities count only money spent with verified subcontractors in favor of a less stringent system which would allow them to estimate the usual percentage of WMDVBE subcontracts awarded by a prime contractor, and to apply that percentage, for goal meeting purposes, to each contract with that contractor. After Commission staff objected to this weakening of GO 156 during a March 13, 1995 workshop on the subject, the parties did agree that the present method of reporting subcontracting credits, counting only verified subcontractors, should not be changed. The parties indicated they would like the issue to remain open and not go to hearing, and they will continue to discuss it informally.

Issue No. 4:

Whether the Commission should adopt the certification procedures contained in 49 CFR, Part 23 and used by Caltrans for WMBE programs of state agencies, in place of the current verification standards utilized by Cordoba Corporation, the WMDVBE verification administrator for utilities.

On January 26, 1995, an informal conference was held among the utilities subject to the WMDVBE statute, the Commission's WMDVBE Program staff, and Systems Support Technologies (the staff's consultant), to discuss matters deriving from the November 21, 1994 PHC.

With respect to the question of the possible adoption of the verification standards set forth in 49 CFR, Part 23, which are used by Caltrans, in place of the current verification standards utilized by Cordoba Corporation (the Commission's verification administrator), the utilities observed that 49 CFR, Part 23 is still evolving, and one can only speculate on the final form it will take. The one thing that could be stated with certainty is that future change in the 49 CFR standards is inevitable. Consequently, the imple-

mentation of Assembly Bill 486, which largely rests on the interpretation of 49 CFR, is also currently in flux. Therefore, it was the consensus of those participating in the conference discussing this issue, that it would be most prudent to defer consideration of revising GO 156 to comport with federal standards, pending the establishment of a new uniform federal standard under the Federal Acquisition Regulations System, 48 CFR 1.000, *et seq.*

Thus, partly for reasons of cost, the utilities were of the view that the decision adopting the Caltrans standard should be postponed for at least a year. Staff has no opposition to the idea of postponing the resolution of this issue, and notes that the issue may be revisited at any time the Commission so desires.

In view of the above, we agree that the issue needs additional study before any decision to abandon the verification standard presently used by Cordoba Corporation can be made.

Utility WMDVBE Goal Achievement Reporting Format

Over the course of the administration of the WMDVBE program, Commission staff has continually sought to refine its data gathering methodology with the goal of standardizing utility reporting, and obtaining more precise data. As a result of this continuing effort, the format of the yearly utility report to the Commission has continued to evolve. To date, the utilities' WMDVBE procurement reporting has been presented in a nonstandardized, ad hoc fashion, tailored to the preferences of the individual utilities rather than to the need of the Commission for standardized data, in a consistent format. To remedy this shortcoming, a new reporting format has been developed, and a copy is annexed to this decision as Attachment A.

Findings of Fact

1. On May 26, 1993, an FPH was convened to inquire into the status of the WMDVBE program established under GO 156, which implements PU Code §§ 8281-8286, commonly referred to as the WMDVBE statute.

2. In D.93-07-057, which concluded the FPH proceeding, we stated that a new proceeding would be opened to address the issues raised at the FPH. This is that proceeding.

3. This proceeding was instituted by an OIR to consider amendment of GO 156.

4. In the OIR, a number of issues were delineated for exploration in this rulemaking proceeding.

5. Between September 22, 1993, the date the OIR was served, and August 3, 1994, Commission staff solicited comments from and met with representatives from a broad based group of utilities, women-owned and operated businesses, minority-owned business enterprises, disabled veterans and veterans organizations, governmental agencies and others having an interest in this subject.

6. In addition to meeting with representatives of various interested groups, Commission staff solicited comments on the issues referred to in the OIR with the understanding that those comments would be assessed by the Commission, and workshops, alternative dispute resolution processes or evidentiary hearings, as appropriate, utilized to resolve contested issues before any revisions to GO 156 are proposed.

7. During the course of the year-long discussions, several issues set forth in the OIR were resolved by agreement by and between the parties to the proceeding. Those issues and the resolution thereof were set forth in an Interim Opinion, D.94-08-027, issued August 3, 1994 and served the following day.

8. None of the issues resolved or the method of resolution set forth in the Interim Opinion required a change in or amendment of GO 156.

9. Discussion concerning the unresolved issues in this proceeding continued and the discussions were broadened to include "housekeeping" matters that would require no change in or amendment to GO 156.

10. In conformity with Ordering Paragraph 1 of D.94-08-027, Commission WMDVBE staff undertook a study to determine the comparability of the Caltrans standards for verification of WMBE status to the Commission's GO 156 program, and the feasibility of using the Caltrans databank in the GO 156 program.

11. A copy of the comparability study was served on each party to this proceeding and copies were distributed to those who attended the PHC held on November 21, 1994.

12. At the PHC, unresolved issues were discussed and at the conclusion of the PHC the ALJ articulated four unresolved issues remaining in the proceeding and requested the parties to file comments on those issues.

13. The unresolved issues on which the ALJ requested comments were:

a. whether the current goal of 20% (15% minority plus 5% women) WMBE utilization should be increased;

b. whether regularly scheduled generic proceedings are needed to provide a forum for resolving issues concerning utility WMBE goal achievement;

c. whether, or to what extent, reporting requirements should be established or changed by the Commission to account for utility utilization of (1) brokers or distributors, (2) WMDVBE utilities, and (3) subcontractors; and

d. whether the Commission should adopt the certifications procedures contained in 49 CFR, Part 23, and used by Caltrans for WMBE programs of state agencies, in place of the current verification standards utilized by Cordoba Corporation, the WMDVBE verification administrator for utilities.

14. The question of the most useful format for reporting utility yearly WMDVBE goal achievement was also raised.

15. A complaint filed by Liberty Builders, a verified WMBE, and MBELDEF, a public interest firm, was also considered by the staff during the course of this proceeding.

16. Since the PHC was held in November 1994, a number of meetings and workshops to discuss outstanding WMDVBE issues were held under the sponsorship of Commission WMDVBE staff.

17. Since 1990, the percentage of utility procurement contracts awarded to WMBEs, measured in terms of total dollar value, has steadily increased, and the 5% WBE participation goal has been met or exceeded each year since 1990, and the 15% MBE participation goal has been met since 1994.

18. Pursuant to D.93-07-057, § 8.2.1 of GO 156 was amended to require each utility to establish the annual goal of increasing DVBE procurement. That section also states that numerical goals will become effective in 1997.

19. The Commission WMDVBE staff has established a GSTF whose duty it is to determine and recommend a percentage goal for DVBE participation in utility procurement programs.

20. DVBE participation in utility procurement, while still less than 1% of total procurement, is increasing at a steady rate.

21. The GSTF is progressing in its study, however, its progress has been delayed by lack of funding due to unavailability of state and utility funding.

22. In D.89-08-026, we held that an annual generic proceeding was the proper forum for resolution of complaints challenging a utility's WMDVBE goal achievements.

23. We now find that the proper means for resolving complaints challenging a utility's WMDVBE goal achievements is informal review by Commission WMDVBE staff. This review comports with the voluntary nature of the utilities' efforts to achieve goals, and allows staff to meet and confer with the utility in an effort to enhance the utility's effectiveness.

24. With respect to the complaint filed by MBELDEF and Liberty Builders against PG&E alleging inadequate outreach efforts by PG&E, a review of PG&E's WMDVBE annual reports reveals that PG&E has exceeded established WMDVBE goals each year since 1991.

25. With respect to brokers or distributors, WMDVBE vendors, and subcontractors, the Commission allows the entire dollar value of the awarded contract to be credited against the contracting utility's yearly WMDVBE goal, whereas the 49 CFR, Part 23 standard allows the awardees *profit* to be so credited.

26. The Commission possesses insufficient information at this time to make a determination whether to adopt Caltrans WMBE verification standards in place of the current standards utilized by Cordoba Corporation.

27. A revised utility yearly WMDVBE goal achievement form is annexed to this decision as Attachment A.

Conclusions of Law

1. Utilities should strive to maximize, as much as is practicable, their WMDVBE procurement. Where goals are established, they should be viewed as targets for which there will be no penalty if a utility fails to meet them. At the same time, the attainment or transcending of the goals is encouraged.

2. DVBE numerical goals will become effective in 1997.

3. An interim goal of 1.5% DVBE participation is established subject to adjustment upon the presentation of the GSTF's report concerning DVBE goals for 1997 and thereafter.

4. Challenges to utilities' WMDVBE achievements should be referred to and reviewed by the Commission's WMDVBE staff and reviewed in light of the utilities' yearly WMDVBE participation reports without formal hearings.

5. Review of PG&E's filed WMDVBE reports indicate that PG&E exceeds the utility-wide WMDVBE goals; thus no further action in response to the MBELDEF and Liberty complaint is appropriate.

6. No change in the method of crediting contract dollar value paid by a utility to WMDVBEs who are distributors, WMDVBE utilities or subcontractors is desirable at this time. WMDVBE utilities may be included in WMDVBE procurement reporting and are not a subject of GO 156 § 8.9.

7. The utilities should not at this time adopt verification standards utilized by Caltrans in place of the Cordoba Corporation WMBE verification standards currently used by the utilities.

8. Attachment A will replace the various reporting styles currently used by the utilities.

ORDER

IT IS ORDERED that:

1. Section 8.12 of General Order (GO) 156 is modified to be consistent with Public Utilities (PU) Code §§ 8281-8286, with the Commission's intent, and with the actual operation of the program. The amended § 8.12 should read:

> "No penalty shall be imposed for failure of any utility to meet and/or exceed goals."

Other mandatory requirements of PU Code §§ 8281-8286 and GO 156 are not affected by this amendment.

2. We establish an interim goal of 1.5% for Disabled Veteran Business Enterprise (DVBE) participation, which is subject to adjustment, if necessary, after receipt of the Goal Setting Task Force's (GSTF) report. A numerical goal for DVBEs will become effective in 1997 after the GSTF has completed its study.

3. Challenges to utility Women/Minority/Disabled Veteran Business Enterprise (WMDVBE) outreach efforts or achievement levels shall be referred to and reviewed by the Commission's WMDVBE Program Manager, who shall examine and evaluate it in light of the WMDVBE participation levels set forth in the affected utility's yearly WMDVBE reports filed with the Commission.

4. The issue of Pacific Gas and Electric Company's goal accomplishments referenced by Decision 94-10-048 requires no further action.

5. Each utility subject to the WMDVBE statute shall report its yearly WMDVBE accomplishments on the form annexed hereto as Attachment A.

This order is effective today.

Dated December 18, 1995, at San Francisco, California.

DANIEL WM. FESSLER
President
P. GREGORY CONLON
JESSIE J. KNIGHT, JR.
HENRY M. DUQUE
JOSIAH L. NEEPER
Commissioners

(Attachments A and B are omitted).